



POLICE DEPARTMENT

March 11, 2013

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Brian Kinkaid  
Tax Registry No. 947657  
109 Precinct  
Disciplinary Case No. 2010-3112

The above-named member of the Department appeared before me on January 4, 2013, charged with the following:

1. Said Probationary Police Officer Brian Kinkaid, while on duty and assigned to the Patrol Borough Queens South Impact Response Team, on or about April 18, 2010, did fail and neglect to prepare a Stop, Question and Frisk Report Worksheet (PD344-151A) documenting his questioning of a person, known to the Department.

P.G. 212-11, Page 1, Paragraph 6 – STOP AND FRISK  
COMMAND OPERATIONS

2. Said Probationary Police Officer Brian Kinkaid, while on-duty and assigned to the Patrol Borough Queens South Impact Response Team, on or about April 18, 2010, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Probationary Police Officer did incorrectly enter the name and date of birth of a peron [sic], known to the Department, on a Criminal Court Summons.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED  
CONDUCT  
GENERAL REGULATIONS

3. Said Probationary Police Officer Brian Kinkaid, while on-duty and assigned to the Patrol Borough Queens South Impact Response Team, on or about April 18, 2010, did fail to have marijuana, that said Probationary Police Officer recovered during an arrest, field tested, resulting in the dismissal of a Criminal Court Summons.

P.G. 209-09, Page 3, Paragraph 16 PERSONAL SERVICE OF SUMMONSES  
RETURNABLE TO TRAFFIC VIOLATIONS  
BUREAU OR CRIMINAL COURT  
SUMMONSES

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4. Said Probationary Police Officer Brian Kinkaid, while on duty and assigned to the Patrol Borough Queens South Impact Response Team, on or about April 18, 2010, did fail to perform a warrant check prior to releasing a person, known to the Department.

P.G. 209-09, Page 1, Paragraph 3 – PERSONAL SERVICE OF SUMMONSES  
RETURNABLE TO TRAFFIC VIOLATIONS  
BUREAU OR CRIMINAL COURT  
SUMMONSES

5. Said Probationary Police Officer Brian Kinkaid, while on-duty and assigned to the Patrol Borough Queens South Impact Response Team, on or about April 18, 2010, did fail and neglect to make proper entries in said Probationary Police Officer's memo book.

P.G. 212-08, Page 1   ACTIVITY LOGS  
COMMAND OPERATIONS

6. Said Probationary Police Officer Brian Kinkaid, while on-duty and assigned to the Patrol Borough Queens South Impact Response Team, on or about April 18, 2010, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Probationary Police Officer did leave a person, known to the Department, unattended at the 113<sup>th</sup> Precinct desk.

P.G. 203-10, Page 1 Paragraph 5   PUBLIC CONTACT - PROHIBITED  
CONDUCT  
GENERAL REGULATIONS

7. Said Probationary Police Officer Brian Kinkaid, while on-duty and assigned to the Patrol Borough Queens South Impact Response Team, on or about April 18, 2010, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Probationary Police Officer did inform another Member of the Service that he had issued a summons to an Internal Affairs Bureau confidential informant. (*As amended*)

P.G. 203-10, Page 1 Paragraph 5 – PUBLIC CONTACT - PROHIBITED  
CONDUCT  
GENERAL REGULATIONS

The Department was represented by Michelle Alleyne, Esq., Department Advocate's Office, and Respondent was represented by Michael Martinez, Esq.

Respondent, through his counsel, entered a plea of Guilty to the subject charges, other than Specification No. 6, and testified in mitigation of the penalty. A stenographic

transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

### DECISION

Respondent, having pleaded Guilty, is found Guilty of Specification Nos. 1 through 5 and Specification No. 7. The Department dismissed Specification No. 6.

### SUMMARY OF EVIDENCE IN MITIGATION

Respondent, who is presently assigned to the 109 Precinct, testified that in April, 2010, he was assigned to the Patrol Borough Queens South Impact Response Team (PBQS IRT). As of April 18, 2010, he had made about 40 arrests, approximately ten of which had been for possession of marijuana.

He was on duty, in uniform on April 18, 2010, assigned to a foot post on Rockaway Boulevard, Queens, when he observed a hand-to-hand exchange of a plastic bag between two men. The two men then parted company and walked away in opposite directions. Respondent approached one of the men and asked him, "Do you have anything on you that you shouldn't have?" The man answered, "Yeah, I have some weed." The man then produced three small plastic bags which contained what appeared to be marijuana and handed them to Respondent.

Respondent then radioed his supervisor who told him to transport the suspect and the bags of suspected marijuana to the 113 Precinct. When Respondent was asked why the suspected marijuana was not field tested at the scene, Respondent explained that he had not been trained how to field test marijuana, that only a handful of officers and

supervisors assigned to PBQS IRT had been trained how to field test marijuana, and that none of these officers or supervisors was available at that time to respond to the scene.

Respondent complied with his supervisor's direction and transported the suspect and the bags of suspected marijuana to the 113 Precinct. Since the suspect had no identification on him, Respondent asked the suspect what his name was and what his date of birth was. Because the first name and the last name that the suspect provided "sounded like two first names," when Respondent prepared the Criminal Court summons he inadvertently switched the suspect's first name and last name on the summons. Because the suspect provided an inaccurate date of birth, the date of birth that Respondent entered on the summons was incorrect. Respondent admitted that at one point he left his prisoner unattended in front of the front desk and that he failed to personally perform a warrant check on his prisoner to check to see if he had any outstanding warrants. Respondent testified that he thought that he had asked a fellow officer to conduct a warrant check on the prisoner.

Respondent made an entry in his memo book about the stop he had conducted and his recovery of the three plastic bags of what appeared to be marijuana but he neglected to enter in his memo book that he had transported the suspect to the 113 Precinct and that the suspect had been released from custody from the 113 Precinct.

Respondent recalled that after his prisoner told him that he was a confidential informant (CI) for the Department, he tried to verify that he actually was a CI by calling a number listed on the prisoner's cell phone. His call was answered by an officer's name but the officer was not present at the command. Respondent admitted that, after the prisoner had been released from custody, while he was making "small talk" with another

uniformed member of the service (UMOS), he offhandedly mentioned that the prisoner had claimed to be a CI. Respondent testified that he had never had any previous contact with anyone who claimed to be a CI.

### PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y. 2d 222 (1974).

Respondent was appointed to the Department on July 8, 2008. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Assistant Department Advocate (the Advocate) recommended that Respondent forfeit 45 vacation days and serve one year on dismissal probation as a penalty. In support of her penalty recommendation, the Advocate cited three prior decisions: *Case Nos. 2009-531; 2009-397; and 2010-2107*.

In *Case No. 2009-531* (May 24, 2011) a 17-year officer who had no prior disciplinary record received a penalty of 30 vacation days and one year on dismissal probation after he pleaded guilty to submitting a Complaint Report, an Arrest Report and a Stop, Question and Frisk Report that contained inaccurate or misleading information. He also pleaded guilty to causing false entries to be made in Department records when he failed to review documents filed in court, signing a Family Court affidavit which contained inaccurate information and failing to make complete Activity Log entries.

In *Case No. 2009-397* (Sept. 28, 2011), a 18-year officer with no prior disciplinary record received a penalty of the loss of 45 days (30 suspension days already

served and 15 vacation days) and one year on dismissal probation after he pleaded guilty to injuring an individual, filing a criminal complaint containing false statements and making a false entry in Department records.

Finally, in *Case No. 2010-2107* (Nov. 8, 2011), a 16-year officer with no prior disciplinary record received a penalty of 30 vacation days after he pleaded guilty to having failed to prepare a Stop, Question and Frisk Report Worksheet. He also pleaded guilty to causing false entries to be made in Department records on several occasions and intentionally falsifying on two of his Monthly Activity Reports the number of summonses he had issued during those two months.

I find that the facts presented here more closely resemble factual situations presented in two other prior decisions: *Case Nos. 2009 85189* and *2010-1563*.

In *Case No. 2009-85189* (Feb. 8, 2011), a five-year officer who had no prior disciplinary record received a penalty of 15 vacation days after he pleaded guilty to having failed to prepare a Stop, Question and Frisk Report Worksheet, documenting that he had stopped a suspect and then released him, and failing to make entries in his memo book regarding this stop. That officer also pleaded guilty to having failed to transport five prisoners to the precinct in a timely matter.

In *Case No. 2010-1563* (May 22, 2012), a six-year officer with no prior disciplinary record received a penalty of 15 vacation days after he pleaded guilty to wrongfully issuing a Criminal Court summons to an arrestee who possessed no identification, failing to make proper memo book entries, and failing to conduct a warrant check before he issued the arrestee a Criminal Court summons and released him. In that case, the officer also pleaded guilty to having failed to request that a patrol supervisor

verify the arrest; to having failed to notify the radio dispatcher that he had placed the arrestee in a patrol car; and to having failed to obtain permission to transport the arrestee to the building where the arrestee claimed he resided.

Here, it is not disputed that Respondent's street stop of a suspect based on Respondent's observation of a hand-to hand exchange, and Respondent's recovery of three small bags of what appeared to be marijuana, was properly performed and constituted fundamentally good police work except for his failure to prepare a Stop, Question and Frisk Report Worksheet and his arrest processing errors.

With regard to Specification No. 2, the Advocate did not refute Respondent's testimony that he incorrectly entered the name of the suspect on the Criminal Court summons because he accidentally switched the suspect's first and last names on the summons.

As to Specification No. 3, the Advocate did not refute Respondent's claims that he had not been trained how to conduct a field test of suspected marijuana, that only a few UMOS assigned to his command had been trained how to field test marijuana, and that because none of these UMOS was available to respond to the scene of the stop, Respondent's supervisor directed him to bring the suspect and the bags of suspected marijuana to the station house.

As to Specification No. 5, the Advocate stated that the only omission in Respondent's memo book entry regarding this stop is that he did not write that the suspect was transported to the 113 Precinct and released from custody there.

Finally, regarding Specification No. 7, the Advocate did not contest Respondent's claim that he had casually mentioned to a UMOS that his prisoner had claimed to be a CI



for the Department solely because of the novelty of the situation since Respondent had never had any previous contact with someone who claimed to be a CI.

With regard to the Advocate's recommendation that Respondent be required to serve one year on dismissal probation, it is not disputed that Respondent was still on entry level probation on April 18, 2010, and that as the result of these charges his entry level probationary period was extended for six months and he was placed on modified assignment from January 6, 2011 until July 30, 2012, when he was restored to full duty. Since Respondent has already served a probationary period of six months as the result of the mistakes he made in processing a single arrest made during a single tour of duty, and since the Advocate conceded that some of Respondent's mistakes could be remedied by better training, it does not appear that the imposition of an additional year on dismissal probation is necessary.

In conclusion, since Respondent has no prior disciplinary record, it is recommended that Respondent forfeit 15 vacation days.

Respectfully submitted,

*Robert W. Vinal*  
*by [Signature]*  
Robert W. Vinal

Assistant Deputy Commissioner - Trials

**APPROVED**  
*[Signature]*  
MAR 26 2013  
RAYMOND W. KELLY  
POLICE COMMISSIONER



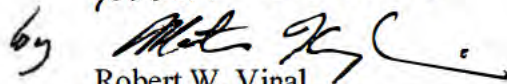
POLICE DEPARTMENT  
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER BRIAN KINKAID  
TAX REGISTRY NO. 947657  
DISCIPLINARY CASE NO. 2010-3112

Respondent received an overall rating of 3.0 on his 2012 five-month interim performance evaluation, 4.5 on his 2011 annual evaluation, and 4.0 on his 2010 annual evaluation. He has been awarded one Meritorious Police Duty medal.

He has no prior disciplinary record and he has no monitoring records.

For your consideration.

Robert W. Vinal  
by   
Robert W. Vinal

Assistant Deputy Commissioner - Trials